

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

BARRY E. SHELLEY,	:	
Petitioner,	:	
v.	:	Case No. 3:05-cv-293-MBC-KAP
GEORGE PATRICK, SUPERINTENDENT,	:	
S.C.I. HOUTZDALE,	:	
Respondent	:	

MEMORANDUM ORDER

This matter was referred to Magistrate Judge Keith A. Pesto for proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and subsections 3 and 4 of Local Rule 72.1 for Magistrate Judges.

The Magistrate Judge filed a Report and Recommendation on May 15, 2008, docket no. 10, recommending that petitioner's petition for a writ of habeas corpus be denied without prejudice for lack of exhaustion of state remedies, and that a certificate of appealability be denied.

The parties were notified that, pursuant to 28 U.S.C. § 636(b)(1), they had ten days to serve and file written objections to the Report and Recommendation. Petitioner filed a pleading styled as a motion to stay on May 27, 2008, docket no. 12, which may be considered objections to the Report and Recommendation.

After de novo review of the record of this matter together with the Report and Recommendation, and the objections thereto, the following order is entered:

AND NOW, this 29th day of May, 2008, it is

ORDERED that the petitioner's petition for a writ of habeas corpus is denied without prejudice. Petitioner may proceed with a habeas corpus petition once the Pennsylvania Superior Court has decided his pending appeal at Commonwealth v. Shelley, No. 540 WDA 2008 (Pa.Super.). A certificate of appealability is denied. The Report and Recommendation is adopted as the opinion of the Court. The Clerk shall mark this matter closed.

BY THE COURT:

Maurice B. Cohill, Jr.
MAURICE B. COHILL, Jr.,
UNITED STATES DISTRICT JUDGE

Notice by ECF to counsel of record and by U.S. Mail to:

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